

Senate Bill No. 1714

CHAPTER 146

An act to amend Section 629.50 of the Penal Code, relating to interception of communications.

[Approved by Governor August 22, 2006. Filed with
Secretary of State August 22, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1714, Margett. Interception of communications: order: application.

Existing law requires certain information to be included in an application for an order authorizing interception of electronic communication, including the oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, or the person designated to act as district attorney in the district attorney's absence.

This bill would require the judge to accept a facsimile copy of the signature of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, or the person designated to act as district attorney in the district attorney's absence as an original signature.

The people of the State of California do enact as follows:

SECTION 1. Section 629.50 of the Penal Code is amended to read:

629.50. (a) Each application for an order authorizing the interception of a wire, electronic pager, or electronic cellular telephone communication shall be made in writing upon the personal oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, or the person designated to act as district attorney in the district attorney's absence, to the presiding judge of the superior court or one other judge designated by the presiding judge. An ordered list of additional judges may be authorized by the presiding judge to sign an order authorizing an interception. One of these judges may hear an application and sign an order only if that judge makes a determination that the presiding judge, the first designated judge, and those judges higher on the list are unavailable. Each application shall include all of the following information:

- (1) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application.
- (2) The identity of the law enforcement agency that is to execute the order.

(3) A statement attesting to a review of the application and the circumstances in support thereof by the chief executive officer, or his or her designee, of the law enforcement agency making the application. This statement shall name the chief executive officer or the designee who effected this review.

(4) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including (A) details as to the particular offense that has been, is being, or is about to be committed, (B) the fact that conventional investigative techniques had been tried and were unsuccessful, or why they reasonably appear to be unlikely to succeed or to be too dangerous, (C) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (D) a particular description of the type of communication sought to be intercepted, and (E) the identity, if known, of the person committing the offense and whose communications are to be intercepted, or if that person's identity is not known, then the information relating to the person's identity that is known to the applicant.

(5) A statement of the period of time for which the interception is required to be maintained, and if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(6) A full and complete statement of the facts concerning all previous applications known, to the individual authorizing and to the individual making the application, to have been made to any judge of a state or federal court for authorization to intercept wire, electronic pager, or electronic cellular telephone communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each of those applications. This requirement may be satisfied by making inquiry of the California Attorney General and the United States Department of Justice and reporting the results of these inquiries in the application.

(7) If the application is for the extension of an order, a statement setting forth the number of communications intercepted pursuant to the original order, and the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(8) An application for modification of an order may be made when there is probable cause to believe that the person or persons identified in the original order have commenced to use a facility or device that is not subject to the original order. Any modification under this subdivision shall only be valid for the period authorized under the order being modified. The application for modification shall meet all of the requirements in paragraphs (1) to (6), inclusive, and shall include a statement of the results thus far obtained from the interception, or a reasonable explanation for the failure to obtain results.

(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of an application for an order under this section.

(c) The judge shall accept a facsimile copy of the signature of any person required to give a personal oath or affirmation pursuant to subdivision (a) as an original signature to the application. The original signed document shall be sealed and kept with the application pursuant to the provisions of Section 629.66 and custody of the original signed document shall be in the same manner as the judge orders for the application.